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Supreme Court, U.S.
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No. 92-1683

In The
Supreme Court of the United States
October Term, 1992

UNITED STATES OF AMERICA,
EX REL. ROLAND A. LEBLANC,

Petitioner,

v.

RAYTHEON COMPANY, INC.,

Respondent

APPENDIX TO

Petition For Writ of Certiorari To The United States Courts of Appeals For The First Circuit

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America,
ex rel. Roland A. LeBlanc,
Plaintiff,

CA No. 88-2363-T

v.

Raytheon Company, Inc.,
Defendant.

ORDER

January 25, 1990

TAURO, D.J.

For the reasons stated in the accompanying memorandum, plaintiff-relator LeBlanc's Motion To Strike United States' Reservation Of Rights is hereby DENIED.

The requirement that the complaint in this case remain under seal, imposed by 31 U.S.C. §3730(b), is hereby removed.

/s/ J. Tauro
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America,
ex rel. Roland A. LeBlanc,
Plaintiff,

CA No. 88-2363-T

v.

Raytheon Company, Inc.,
Defendant.

MEMORANDUM

January 25, 1990

TAURO, D.J.

Plaintiff, Roland LeBlanc, is a former Quality Assurance Specialist of the United States Government Defense Contract Administrative Service ("DCAS"). While so employed, he was stationed for eleven months at the Waltham, Massachusetts plant of defendant Raytheon Company, Inc. ("Raytheon"). There, LeBlanc allegedly observed several violations by Raytheon employees in their handling of government

contracts. He reported these violations to his superiors at DCAS, and appropriate actions were taken.

In October 1988, eleven months after he was terminated by DCAS, LeBlanc brought this qui tam(1) action in the name of the United States, pursuant to the Federal False Claims Act,(2) to recover damages and civil penalties for Raytheon's alleged frauds against the United States. Under the False Claims Act, a qui tam suit must

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(1) "Qui tam" comes from a longer Latin phrase meaning "who brings the action for the king as well as himself." See Erickson v. American Institute of Bio. Sciences, 716 F. Supp. 908, 909, n.1 (E.D.Va. 1989) citing W. Blackstone, Commentaries on the Law of England 160 (1768). A qui tam action is an action brought by an informer, pursuant to a statute, where a portion of the recovery goes to the informer and the remainder goes to the state. Id.

(2)Title 31 U.S.C.A. §3729 et seq.(West Supp. 1989).

first be served on the United States, rather than the defendant. It is filed in camera, where it remains under seal for at least sixty days. 31 U.S.C.A. §3730(b)(2) (West Supp. 1989). Within those sixty days, the government has the option to intervene and take over the prosecution of the case. Id. If the government chooses to intervene, it becomes the primary responsible party, although the qui tam plaintiff, also known as the "relator," U.S.C.A. §3730(c)(1) (West Supp. 1989). If the government chooses not to intervene, the relator then has the right to proceed with the case on his own with the hope of recovering a portion of any consequent damages and penalties. 31 U.S.C.A. §§37370(c)(3) and (d)(2) (West Supp. 1989).

LeBlanc properly filed his suit with the government. The government ultimately

chose not to intervene. But, in its Declination of Appearance, the government reserved "the right to object to the relator's right under 31 U.S.C. §3730(d) to recover, if successful, a percentage of the proceeds from the prosecution of this action." United States' Notice of Declination of Appearance, p. 2.

Presently at issue is LeBlanc's motion to strike the Government's reservation of the right to object to LeBlanc's recovery of proceeds. In support of his motion, LeBlanc argues that the recent revisions to the False Claims Act authorize his recovery of proceeds, regardless of his former status as a government employee. The government opposes the motion to strike, arguing that: 1) the motion is premature, rendering any court decision here a mere advisory opinion; and 2) the False Claims

Act does not authorize government employees to file qui tam suits based solely on information obtained in the course of government employment.

I

The first issue to be addressed is whether this case presents a live "case or controversy" such that jurisdiction would be proper under Article III of the Constitution. See Diamond, et al. v. Charles, 476 U.S. 54, 61, 106 S.Ct. 1697 (1986) ("Article III of the Constitution limits the power of federal courts to deciding 'cases' and 'controversies.'"); Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 2204 (1975) (justiciable case or controversy is a jurisdictional prerequisite). The government argues that, because it is not clear that the government will ever exercise its right to object to LeBlanc's recovery, the

issue of whether LeBlanc is entitled to any proceeds is not a ripe "case" or "controversy." LeBlanc unfortunately fails to address this argument, and it is one that is ultimately dispositive.

The government has not officially object to LeBlanc's recovery of proceeds from the proposed qui tam suit. It has merely reserved its right to do so. Where, as here, the challenged conduct is only threatened, "[t]he plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" Los Angeles v. Lyons, 461 U.S. 95, 101-2, 103 S.Ct. 1660 (1982). See also, Thomas v. Union Carbide Agricultural Products, Co., 473 U.S. 568,

580, 105 S.Ct. 3325 (1985) (ripeness doctrine prevents courts from "premature adjudication" of "abstract disagreements"). The determination as to whether a threat is sufficiently immediate to warrant a finding of jurisdiction is to be made by analyzing the underlying factual circumstances.(3)

There are three critical uncertainties that permeate the situation here. First, it is not clear that LeBlanc will even proceed with the suit. Second, it is problematical as to whether he will be successful if he does proceed. Third, it is an open question as to whether the government will object to LeBlanc's recovery, should he successfully prosecute the suit. In light of these several

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(3) Maryland Casualty Co. v. Pacific Oil Co., 312 U.S. 270, 273 (1941).

contingencies, the possible threat of a government objection is not sufficiently real and immediate to justify this court's jurisdiction.(4) The special circumstances of this case do not warrant a more permissive standard of ripeness analysis. Of course, the refusal of jurisdiction here may frustrate the purpose of the False Claims Act's qui tam provisions, which is to provide financial incentives that will encourage the exposure of frauds against the government.

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(4) See Fagot v. Federal Deposit Insurance Corp., 584 F. Supp. 1168, 1179 (D.P.R. 1984) ("[T]he alleged controversy cannot be based upon the possibility of a factual situation that may never develop."). See also Thomas v. Union Carbide Agricultural Products Co., 473 U.S. 568, 580-81, 105 S.Ct. 3325 (1985) (case not ripe where claim involves "contingent future events that may not occur as anticipated, or indeed may not occur at all."); Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 241, 57 S.Ct. 461 (1937) (courts should avoid issuing an "opinion advising what law would be upon a hypothetical state of facts."). Cf.

See United States ex rel. LaValley v. First National Bank of Boston, 707 F. Supp. 1351, 1355 (D.Mass. 1988); S. Rep. No. 99-345, 99th See United States Cong., 2d Sess. 3-4, reprinted in 1986 U.S. Code Cong. & Admin. News 5266-67. Faced with the possibility that the government might later object to his recovery of proceeds, a relator, like LeBlanc, may choose not to chance the costs of prosecution, because there would be no guarantee of a return on his investment. By holding that a relator may not establish his right to claim qui tam proceeds until the government actually objects to his recovery, this court may arguably chill the incentives that the

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Eccles v. Peoples Bank, 333 U.S. 426, 434, 68 S.Ct. 641 (1948) ("Where administrative intention is expressed but has not yet come to fruition . . . we have held that the controversy is not yet ripe for equitable intervention.").

False Claims Act sought to create. But, where the requirements of ripeness are not satisfied, jurisdiction may not be presumed merely because resolution of the substantive issue might advance a worthwhile policy goal. In another context, the Eleventh Circuit has stated:

> Needless to say, the decision makers would benefit greatly by having guidance as to the potential legal ramifications of their decisions. Furnishing such guidance prior to the making of the decision, however, is the role of counsel, not of the courts.

Hendrix v. Poonai, 662 F.2d 719, 722 (11th Cir. 1981).(5)

Finally, it can also be argued that, rather than seeking coercive relief prematurely, LeBlanc's motion is, in fact, a request for a declaration that he is authorized to proceed under the False

(5) See also, 6A Moore's Federal Practice ¶ 57.12 (2d ed. 1989)("[T]he requirements of justiciability are not met if the

Claims Act. "[W]hen coercive relief only is sought but is deemed ungrantable or inappropriate, the court may sua sponte, if it serves a useful purpose, grant instead a declaration of rights." Fed.R.Civ.P. 57 (Declaratory Judgments), advisory committee's note.

This argument, however, falls prey to the same problems of ripeness noted above. Declaratory relief is one of a range of remedies available to a litigant. But, an independent basis for federal court jurisdiction must be established before a litigant is entitled to declaratory relief. See Skelly Oil v. Phillips Petroleum Co., 339 U.S. 667, 671-72, 70 S.Ct. 876 (1950); Colonial Penn Group, Inc. v. Colonial Deposit Co., 834 F.2d

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complainant merely alleges that he 'is at a loss to know what course to pursue.'") quoting M & M Transportation Co. v. U.S. Industries, Inc., 416 F. Supp. 865 (S.D.N.Y. 1976).

229, 232 (1st Cir. 1987) ("Federal jurisdiction does not lie simply because relief is requested under the federal Declaratory Judgment Act").

Moreover, when a plaintiff relies on a request for declaratory relief to engage in a preemptive strike against threatened action by the declaratory defendant, the "well-pleaded complaint rule" applies. Greenfield and Montague Transp. Area v. Donovan, 758 F.2d 22, 26 (1st Cir. 1985). The rule, in this context, requires that:

> [W]here the complaint in an action for declaratory judgment seeks in essence to assert a defense to an impending or threatened . . . action, it is the character of the threatened action, and not of the defense, which will determine whether there is federal-question jurisdiction in the District Court. If the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim.

Greenfield and Montague at 26-7, citing

Public Service Commission v. Wycoff Co., 344 U.S. 237, 248, 73 S.Ct. 236 (1952).

LeBlanc's motion is, in effect, an effort to put in play his defense to the government's threat of objection to his recovery. The government's threat, therefore, and not LeBlanc's request, must provide the basis for jurisdiction. And, as has already been noted, the government's threat depends upon the occurrence of too many contingencies to make it a live "case or controversy." Even if we cast LeBlanc's motion as a request for declaratory relief, therefore, there is no ripe controversy that would provide jurisdiction.

Accordingly, as LeBlanc's motion does not present an actual "case" or "controversy," it must be denied.

II

Even if LeBlanc's motion does present

an actual "case or controversy," it must be denied on the merits. The False Claims Act bars qui tam suits by former government employees, based upon information they acquired in the course of their government employment.

Prior to 1986, the False Claims Act prohibited former government employees from bringing qui tam suits based on information acquired during the course of their government employment.(6) The False Claims Act was substantially amended in 1986(7), however, and its qui tam provisions were revised.(8) In its

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(6)The pre-1986 version of 31 U.S.C. §3730(d) provided that courts had no jurisdiction over qui tam suits "based on evidence or information the Government had when the action was brought." See former 31 U.S.C.A. §3730(b)(4) (West 1983). That jurisdictional bar was included in the False Claims Act in 1943, in order to stem the tide of "parasitical actions" in which former government employees would base their litigation on information already

present form, the False Claims Act provides, in relevant part:

> **(e) Certain actions barred . . .**
> (4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office Report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.
>
> (B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.
>
> 31 U.S.C.A. §3730(e)(4) (West Supp. 1989).

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secured by the government in the regular course of law enforcement." See letter of Attorney General Biddle, reprinted in H.R. Rep. No. 263, 78th Cong. 1st Sess. 2 (1943). One of Congress's concerns at that time was that qui tam suits might induce government employees to investigate claims with an eye toward remuneration

Only one case, Erickson, ex rel. United States v, American Institute of Biological Sciences, 716 F. Supp. 908 (E.D.Va. 1989), has addressed the issue of whether the 1986 amendments to the False Claims Act removed the jurisdictional bar against government employees.(9) The court in Erickson concluded that, although

over and above that provided by their jobs. Erickson, ex rel. United States v. American Inst. of Bio. Sciences, 716 F. Supp. 908. 816, n. 18 (E.D.Va. 1989).
(7)False Claims Amendments Act of 1986, Pub. L. No. 99-562, 100 Stat. 3153 (1986).
(8) The government concedes that the 1986 amendments came about because the jurisdictional bar was too broad. For example, the pre-1986 provisions prohibited suits by "honest informers" such as: 1) those who had independent information of fraud, which the government also happened to possess, and 2) "original sources" who gave the information to the government, but then found themselves barred by the very submission because, "at the time the suit was brought," the government possessed the information. See United States ex rel. State of Wisconsin v. Dean, 729 F.2d 1100 (7th Cir. 1984); United States ex rel. LaValley v. First National Bank of Boston, 707 F. Supp 1351, 1355 (D.Mass. 1988).

the False Claims Act, as amended, does not expressly address this question, the language, structure, legislative history,, and purpose of the amendments reveal a legislative intend to permit government employees to sue under the False Claims. 716 F. Supp. at 918.

The court notes that the amended statute permits any "person" to sue, unless he falls into one of four specifically excluded groups.(10) It concluded that the qui tam plaintiff there under facts similar to the case at bar,(11) did not fall into any of the four excluded groups. Id. at 914. According

(9)The government cites one other case which held, according to the government, that government employees are still barred from suing under the False Claims Act. Because that case remains under seal, however, this court cannot properly consider it.

(10)Title 31 U.S.C. §3730(e) specifically bars the following four groups of suits: 1) suits between members of the military (§3730(e)(1)); 2) suits against members of

to Erickson, not even §3730(e)(4) excluded the relator, because he was the "original source" of the information. Id.(12)

This court agrees with the conclusion in Erickson that the Act was specifically amended to allow all persons to sue, unless they fall into §3730(e)'s four excluded classes. But this court disagrees with Erickson's determination

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of Congress, the Judiciary, or senior Executive officials if the action is based on evidence or information known to the government when the action was brought (§3730(e)(2)); 3) suits based on allegations which are the subject of a civil suit in which the government is already a party (§3730(e)(3)); and 4) suits based on the public disclosure of allegations in a public proceeding, unless the person suing is the original source of the information. (§3730(e)(4)). See supra for full text of §3730(e)(4).

(11)Erickson worked for a State Department Agency, and his job was to ensure that a private laboratory's contract with the agency was properly administered. Erickson discovered violations of the contract and reported the misconduct directly to his supervisor. When the agency for which he worked declined to pursue the matter, he filed a qui tam suit.

that government employees are not excludedunder the terms of the statute. Government employees are excluded by §3730(e)(4) of the False Claims Act. That section prohibits suits based on the "public disclosure" of government information. 31 U.S.C.A. §3730(e)(4) (West Supp. 1989). Because government employees maintain a dual status -- arms of the government while at work, private citizens while not at work -- a "public disclosure" necessarily occurs whenever a government employee uses government information he learned on the job to file

(12) The Erickson court drew further support from the FFCA's "whistleblower" provision, §3730(h), in which the definition of "employer" was intended to include public as well as private entities. Id. at 914. The court derived from this the implication that government employees are specifically included in the class of people Congress desires to have aid in enforcement of the anti-fraud laws generally.

a qui tam suit in his private capacity.(13)

Moreover, a former government employee like LeBlanc cannot quality for the "original source" exception to §3730(e)(4)'s jurisdictional bar. An "original source" is defined in the statute as:

> . . . an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C.A. §3730(e)(4)(B) (West Supp. 1989). LeBlanc was not someone with "independent knowledge of the information." Rather he was a government employee whose responsibility it was to uncover such information. Because gaining the information was required of him as a condition of his employment, the fruits of his effort belong to his employer --

the government. For purposes of the proferred information, the government and LeBlanc were indistinguishable, as opposed to individual entities. Given his status, LeBlanc did not provide information to the government "voluntarily," under the terms of the statute. Rather, he reported the information to the government in response to the obligations of his employment.

The interpretation of §3730(e)(4) followed here is consistent with Congressional intent.(14) The "original source doctrine" was designed to bridge Congress' competing goals of preventing opportunistic lawsuits while at the same time encouraging the disclosure of information otherwise unavailable to the government. See U.S. ex rel. Stinson, et al. v. Provident Life & Accident Ins. Co.,

(13)This argument was not addressed in the Erickson case.

721 F. Supp. 1247, 1250 (S.D.Fla. 1989) citing 132 Cong. Rec. S11244 (daily ed. Aug. 11, 1986) (statement of Sen. Grassley).

A lawsuit by a former government employee based on information he obtained soley [sic] through his employment can fairly be construed as "opportunistic." The relator in such a context would profit from information already obtained at the taxpayer's expense. In other words, permitting former government employees to bring qui tam actions based upon information they discovered on the job would allow them to be paid twice for the same work. That is not what Congress had in mind.(15)

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(14)The ambiguity of terms of art such as "public disclosure" and "original source" requires that the terms be construed in light of the objects and policies of the statute as a whole. See Stafford v. Briggs, 444 U.S. 527, 535, 100 S.Ct. 774 (1980) (courts should look, beyond literal

Cf. United States ex rel. Marcus v. Hess, 317 U.S. 537, 560, 63 S.Ct. 379 (1943) (Jackson, J., dissenting).(16)

A bar to suits by government employees,

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use of terms, to objects and policies o statute as a whole); United States v. McGoff, 831 F.2d 1071, 1078 (D.C. Cir. 1987) ("The settled approach for interpreting [terms of art] is . . . not one emphasizing ordinary meaning.").

(15)Indeed, permitting government employees to bring such qui tam suits would contravene other official expressions of the policy against "opportunism." For example, President Johnson issued an executive order in 1965 which provided:

> Sec. 203. Employees may not (a) have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as Federal employees, or (b) engage in, directly or indirectly, financial transactions as a result of, or obtained through their employment . .
>
> Sec. 205. An employee shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

employees, present or former, is consistent with the balance of goals that the "original source doctrine" sought to achieve. While Congress intended to expand the class of eligible relators, it maintained its interest in preventing parasitical suits primarily relying upon, information government employee based on frauds which add nothing to the enforcement of anti-

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Exec. Order No. 11222, 30 Fed. Reg. 6469 (1965), reprinted in 1965 U.S. Code Cong. & Admin. News 4385. Additionally, Title 18 U.S.C.A. § 208(a) (West Supp. 1989) imposes criminal penalties upon any employee who "participates personally and substantially as a Government officer or employee, through . . . investigation . . . in . . . [any] particular matter in which, to his knowledge, he . . . has a financial interest . . . ." While neither of these examples is directly applicable, they serve to reinforce the government's policy against the opportunistic uses of government information.

(16)At the heart of the government's arguments is the concern that permitting government employees to sue will result in unseemly races to the courthouse between government employees and the government,

fraud laws.(17) A suit brought by a

and may discourage government employees from furthering investigations of fraud for fear of losing control over information on which a suit may be brought.

These same concerns were raised by Justice Jackson in his dissent in United States ex rel. Marcus v. Hess, 317 U.S. 537, 63 S.Ct. 379 (1943). In construing the original 1863 False Claims Act, the majority of the Marcus Court concluded that, not only did the Act permit suits by "any person", but "even a district attorney, who would presumably gain all knowledge of a fraud from his official position, might sue as the informer." 317 U.S. at 546. Justice Jackson criticized the majority, saying:

> To accept the view . . . that today law-enforcement officials could use information gleaned in their investigations to sue as informers for their own profit, would make the law a downright vicious and corrupting one . . . . If we were to add motives of personal avarice to other prompters of official zeal the time might come when the scandals of law-enforcement would exceed the scandals of its violation.

Id. at 560.

Indeed, the 1943 amendment creating a blanket exclusion for government employees was passed largely in response to the majority's conclusion in Marcus. See Erickson at 915-16; U.S. ex rel. LaValley v. First Nat. Bank of Boston, 707 F. Supp. 1351, 1354 (D.Mass. 1988).

the enforcement process.(18) To be consistent with Congress' intent, §3730(e)(4) must be interpreted to ban all qui tam suits based on government information, unless the individual bringing the suit acquired his knowledge

(continued)

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(18)In the case of the private relator, the government's enforcement is enhanced, at the outset. Even though a suit after the private relator has disclosed the information pursuant to §3730(e)(4) adds nothing new to the government's body of information, the initial disclosure of the information did add something. The government obtained information that it did not have before, because the individual had no prior obligation to turn over his information to the government. Conversely, at no point in the qui tam proceeding does a government employee add to the government's body of information. In his capacity as a government employee, the relator was acting as an arm of the government. When he discovered the fraud in the course of his employment, therefore, it was the government that discovered the fraud. His subsequent "voluntary" disclosure pursuant to §3730(e)(4), therefore, adds nothing to what the government already knew.

of the fraud in his private capacity.(19) Qui tam suits, such as LeBlanc's, that are based upon information discovered in the course of government employment, therefore, are barred.

An order will issue.

/s/ J. Tauro
United States District Court

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(19)For example, the "original source" exception in §3730(e)(4) contemplates a situation in which a private citizen discovers a fraud, reports it to government authorities, and the information is somehow public disclosed. Notwithstanding the public disclosure, the private individual may still maintain his suit because he, as a private citizen, originally discovered the fraud.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America,
ex rel. Roland A. LeBlanc,
Plaintiff,

CA No. 88-2363-T

v.

Raytheon Company, Inc.,
Defendant.

AMENDED ORDER

February 6, 1990

TAURO, D.J.

For the reasons stated in United States of America, ex rel. Roland A. LeBlanc v. Raytheon Company, Inc., CA No. 88-2363-T (D. Mass. Jan. 25, 1990((memorandum) (Tauro, J.), plaintiff-relator LeBlanc's Motion To Strike United States' Reservation Of Rights is hereby DENIED for failure to present an actual "case or controversy."

Alternatively, because this qui tam suit is jurisdictionally barred by §3730(e)(4) of the Federal False Claims

Act, 31 U.S.C. §3729 et seq., this action is hereby DISMISSED.

IT IS SO ORDERED.

/s/ J. Tauro
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America,
ex rel. Roland A. LeBlanc,
Plaintiff,

CA No. 88-2363-T

v.

Raytheon Company, Inc.,
Defendant.

ERRATA SHEET

February 6, 1990

To all counsel:

Please be advised that the memorandum dated January 25, 1990 has been amended as follows:

The first sentence of Section II, paragraph one, page 8 now reads:

> Even if LeBlanc's motion does not present an actual "case or controversy," his qui tam complaint must be dismissed.

/s/ J. Tauro
United States District

United States Court of Appeals
For the First Circuit

No. 90-1246

UNITED STATES OF AMERICA
ex rel. ROLAND A. LEBLANC
Plaintiff-Relator, Appellant

v.

RAYTHEON COMPANY, INC.,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Joseph L. Tauro, U.S. District Judge]

Before

Torruella, Circuit Judge,
Bownes, Senior Circuit Judge,
and Cyr, Circuit Judge.

James C. Heigham, with whom Francisca D. Morant, Choate, Hall & Stewart, Charles B. Molineaux and Dempsey, Bastianelli, Brown & Touhey, were on brief for appellant.

Michael F. Hertz, Civil Division, U.S. Department of Justice, Stuart M. Gerson, Assistant Attorney General and Wayne A. Budd, United States Attorney, were on brief for appellee.

September 4, 1990

TORRUELLA, Circuit Judge. This is an appeal from an order entered by the United States District Court for the District of Massachusetts dismissing for lack of jurisdiction a qui tam action brought under the False Claims Act, 31 U.S.C. § 3729 et seq., by Roland A. LeBlanc (appellant) against Raytheon Company, Inc. (appellee). Although we agree with the result reached by the district court, we find its reasoning overly broad and conclusive.

I. FACTS

Roland LeBlanc filed this lawsuit on October 21, 1988 under the False Claims Act, 31 U.S.C. §§ 3729-3733 (1988). LeBlanc's complaint alleged that, during his employment as a Quality Assurance Specialist for the united States Government Defense Contract Administrative

Service ("DCAS"), he observed fraud in the handling of government contracts by the defendant Raytheon Company, Inc. ("Raytheon").

Under the False Claims Act, a qui tam action must first be served on the United States, rather than on a defendant. It is filed in camera, where it remains under seal for at least sixty days. 31 U.S.C.A. § 3730(b)(2). Within those sixty days, the government has the option to intervene and take over the prosecution of the case. Id. If the government chooses to intervene, it becomes the primarily responsible party, although the qui tam plaintiff, also known as the "relator," may still continue as a party. 31 U.S.C.A. § 3730(c)(1). If the government chooses not to intervene, the relator then has the right to proceed with the case on his own, with the hope of recovering a

portion of any consequent damages and penalties. 31 U.S.C.A ¶¶ 3730(c)(3) and (d)(2). When declining to appear, the government may reserve the right to object to the relator's right under 31 U.S.C.A. § 3730(d) to recover, if successful, a percentage of the proceeds from the prosecution of the action.

LeBlanc properly filed his suit with the government. The government ultimately chose not to intervene, but filed a reservation of the right to collect if LeBlanc should prevail. Below, LeBlanc moved to strike the government's reservation. The district court dismissed the motion, holding that it was premature in that it did not present a live case or controversy. With this we agree. Since the government has not officially objected to LeBlanc's recovery of proceeds from the proposed qui tam suit, the challenged

conduct is only threatened, not actual. We will not decide an issue that is merely conjectural or hypothetical. Los Angeles v. Lyons, 461 U.S. 95, 101-2 (1982). However, the district court went on to hold that qui tam actions by government employees are excluded by the False Claims Act. Here, we disagree. Although we do agree that Roland LeBlanc's action is excluded, as discussed below, not all qui tam actions brought by government employees are excluded by the False Claims Act.

II. DISCUSSION

From 1943 to 1986, government employees were effectively prohibited from bringing qui tam actions by the False Claims Act.(1) In 1986, Congress amended the statute to "encourage more private enforcement suits." S. Rep. No. 99-345, 99th Cong., 2d Sess. 23-24, reprinted in

1986 U.S. Code Cong. & Admin. News 5288-89. This case turns on the meaning of the 1986 amendment to the qui tam(2) provisions of the False Claims Act. Basically, Congress broadened the universe of potential plaintiffs, with only four

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(1) Before its amendment in 1986, 31 U.S.C. § 3730 effectively prohibited both current and former government employees from bringing qui tam actions based on information acquired while a government employee. United States ex rel. McCans v. Armour & Co., 146 F. Supp. 546 (D.D.C. 1956) (per curiam), aff'd, 254 F.2d 90, cert. denied, 358 U.S. 834 (1958). The pre-1986 version of 31 U.S.C. § 3730(d) had provided that courts had no jurisdiction over qui tam actions "based on evidence or information the Government had when the action was brought."

(2)"Qui tam" comes from the Latin phrase "who brings the action for the king as well as himself." See Erickson v. American Institute of Bio. Sciences, 716 F. Supp. 908, 909 n.1 (E.D.Va. 1989) (citing W. Blackstone, Commentaries on the Law of England, 160 (1768)). By statute a qui tam action allows an informer to become a "private attorney general" with a portion of the recovery going to the informer and the remainder to the state.

exclusions. At issue here is whether or not government employees fall under one of those exclusions, § 3730(e)(4), and are still barred from bringing suits under the Act. The False Claims Act provides in relevant part:

> (3) Certain actions barred . . .
> (4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office Report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.
>
> (B For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

31 U.S.C.A. § 3730(e)(4).

Erickson, ex rel. United States v.

American Institute of Bio. Sciences, 716 F. Supp. 908 (E.D. Va. 1989), the only case to discuss the issue of whether government employees can bring qui tam actions after the 1986 amendments, held that the language structure, legislative history and purpose of the 1986 amendments reveal a legislative intent to permit such actions. The Erickson court reasoned that since § 3730(b) states that any "person may bring a civil action," and because nowhere in the statute are there restrictions on the term "persons," Congress intended that "Government employees are included in the general universe of permissible qui tam plaintiffs unless, in the particular circumstances, they fall into one of the four specifically excluded groups." Id. at 913. Erickson went on to hold that government employees did not fall into the

exclusion of § 3730(e)(4), which is also the exclusion at issue in this case.

The district court, while agreeing with Erickson that the False Claims Act was specifically amended to broaden the scope of permissible plaintiffs, concluded that government employees did indeed constitute an excluded group under ¶ 3730(e)(4) and thus are barred from bringing qui tam actions. The district court found that because "government employees maintain a dual status - arms of the government while at work, private citizens while not at work - a 'public disclosure' necessarily occurs whenever a government employee uses government information he learned on the job to file a qui tam suit in his private capacity. Furthermore, the district court went on to conclude that all government employees are barred under the original source exception of § 3730(e)(4) as well.

The district court need not have gone so far. For this reason we take this opportunity to clarify and limit the district court's holding and analysis.

A. PUBLIC DISCLOSURE

The district court's analysis of the "public disclosure" provision effectively erases a large portion of § 3730(3)(e)(4). We disagree with the district court's analysis for three reasons. First, the logical reading is that the subsection serves to prohibit courts from hearing qui tam actions based on information made available to the public during the course of a government hearing, investigation or audit or from the news media. It bars government employees, as well as private citizens, from bringing qui tam actions only if the information forming the basis of the action was acquired in the circumstances described in 31 U.S.C. §

3730(e)(4)(A). It does not prevent government employees from bringing qui tam actions based on information acquired during the course of their employment but not as the result of a government hearing, investigation or audit or through the news media.

Second, the district court's analysis of the subsection requires the assumption that government employees lead schizophrenic lives and can publicly disclose information to themselves. Even were this hypothesis physically reasonable, it totally ignores the limiting language in § 3730(e)(4)(A) which follows the term "public disclosure." That language bars jurisdiction over actions "based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a congressional, administrative, or

Government Account Office report, hearing, audit, or investigation, or from the news media . . ." It does not deny jurisdiction over actions based on disclosures other than those specified, contrary to what the district court seemed to maintain.

Last, the district court further assumes that the filing of a qui tam action is itself a public disclosure." This cannot be. Such an action is filed under seal without service on anyone other than the United States and remains non-public until the district court enters an order lifting the seal. To hold otherwise would be to render each and every filing a "public disclosure," thus barring all qui tam actions.

B. ORIGINAL SOURCE

The district court held that a government employee in the same position

as LeBlanc cannot quality for the "original source" exception to § 3730(e)(4)'s jurisdictional bar. We agree. It was responsibility, a condition of his employment, to uncover fraud. The fruits of his effort belong to his employer - the government. Thus, LeBlanc was not someone with "independent knowledge of the information" as required by the statute. This conclusion, however, does not mean that there is no government employee who could qualify to bring a qui tam action under the original source exception. We decline to draft a litigation manual full of scenarios that would fall under the exception. Suffice it to say that we limit our holding to the facts.

Affirmed in result.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA ex rel.
ROLAND A. LEBLANC,

Plaintiff,

v. CASE NO. 91-440-CIV-ORL-19

RAYTHEON COMPANY, INC.,

Defendant.

ORDER

This case is considered by the Court upon the Government's Notice of Declination (Doc. No. 24, filed December 16, 1991) and Qui Tam Plaintiff's Motion to Remove Seal and for Leave to Serve Defendant and Memorandum in Support thereof (Doc. Nos. 26 and 27, filed December 27, 1991).

The Government has filed notice that it declines to proceed against this Defendant in the action initiated against Defendant Raytheon by qui tam Plaintiff LeBlanc. Pursuant to 31 U.S.C. §

3730(b)(4)(B), the qui tam Plaintiff has the right to proceed with the action. Therefore, the Court **GRANTS** Qui Tam Plaintiff's Motion to Remove Seal and for Leave to Serve Defendant (Doc. No. 26). In accordance with the Government's request, the Court further directs that qui tam Plaintiff serve upon the Government copies of all pleadings filed in this action. 31 U.S.C. § 3730c)(3).

DONE AND ORDERED AT Orlando, Florida, this 30th day of January, 1992.

/s/ Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA ex rel.
ROLAND A. LEBLANC,

Plaintiff,

v. CASE NO. 91-440-CIV-ORL-19

RAYTHEON COMPANY, INC.,

Defendant

ORDER

This case is before the Court upon Defendant's Motion to Dismiss Complaint or, Alternatively, to Transfer this Matter to the District of Massachusetts and Memorandum in Support thereof (Doc. Nos. 30 and 31, filed March 4, 1992) and Plaintiff's Response in Opposition to Plaintiff's Motion to Dismiss or to Transfer (Doc. No. 38, filed March 27, 1992).

Defendant moves to transfer this action to the District of Massachusetts

pursuant to 28 U.S.C. §1404(a). Defendant contends that the District of Massachusetts is a much more convenient forum for this action and that none of the operative facts alleged in the Complaint relate in any way to the Middle District of Florida. Plaintiff argues that Defendant has failed to demonstrate that the balance of convenience weighs strongly in favor of the proposed transferee court. In addition, Plaintiff maintains that a transfer is premature because the parties have not had sufficient opportunity to obtain facts relevant to the convenience of these respective forums.

Title 28, United States Code, Section 1404(a) provides:

> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

The burden of proof rests with the moving party, who must make a convincing showing of the right to transfer. Garay v. BRK Electronics, 755 F.Supp. 1010, 1011 (M.D.Fla. 1991). The plaintiff's choice of forum typically will not be disturbed unless the balance of convenience strongly favors the transfer. Id. Any number of factors are relevant to this determination, including: (1) convenience of the parties; (2) convenience of the witnesses; (3) relative ease of access to sources of proof; (4) availability of process to compel presence of unwilling witnesses; (5) cost of obtaining presence of witnesses; and (6) the public interest. Id.; Windmere Corp. v. Remington Products, Inc., 617 F.Supp. 8, 10 (S.D.Fla. 1985). The decision ultimately is committed to the court's sound discretion. Cortez v.

First City National Bank of Houston, 735 F.Supp. 1021, 1023 (M.D.Fla. 1990); Citizens Mortgage Corp. v. Investors Mortgage Insurance Co., 706 F.Supp. 819, 823-24 (M.D.Fla. 1989).

It is evident from the Complaint and the affidavit of John P. Booth that the connection between the subject matter of this lawsuit and the Middle District of Florida is virtually nonexistent. Plaintiff has failed to identify any relationship between his claims and this District other than the fact that Defendant does business here. All of the claims are based on Plaintiff's observations of allegedly fraudulent or improper conduct that took place at Defendant's production facility in Waltham, Massachusetts. In addition, Defendant maintains its corporate headquarters in Lexington, Massachusetts.

Consequently, witnesses, documents and physical evidence are likely to be concentrated in and around Massachusetts. There is no indication that any witnesses or other sources of evidence are located in the Middle District of Florida. It will undoubtedly be easier and less expensive to obtain and present evidence concerning these claims if the case is transferred to the District of Massachusetts. Furthermore, Massachusetts will provide a more convenient forum not only for Defendant, but also for Plaintiff, who resides in Massachusetts, and for the likely witnesses.

Although a plaintiff's choice of forum is usually accorded substantial weight in determining whether to transfer venue, it is not controlling. Garner v. Wolfinbarger, 433 F.2d 117, 119 (5th Cir. 1970); Windmere, 617 F.Supp. at 10. When

the operative facts underlying the claims did not occur in the forum chosen by the plaintiff, the plaintiff's choice is entitled to less consideration. Garay, 755 F.Supp. at 1011; Windmere, 617 F.Supp. at 10. As discussed above, the Middle District of Florida lacks any meaningful relationship to the events that are the subject of the Complaint. Defendant has easily met its burden of showing that the District of Massachusetts is a more convenient forum and that a transfer to Massachusetts is in the interests of justice.

Plaintiff argues that the motion to transfer is premature because the parties have not had an opportunity to obtain all the facts bearing upon the convenience of this forum. The allegations of the Complaint demonstrate that the Middle District of Florida has no connection to

the subject matter of this lawsuit. This inescapable conclusion is further supported by the affidavit of John P. Booth. Plaintiff, on the other hand, despite having submitted a 205-page Complaint detailing ninety-two separate claims, is apparently unable to identify any relationship between the claims and the middle District of Florida. His contention that additional time is needed to obtain such facts in this regard is unpersuasive.

Finally, Plaintiff suggests that Defendant has put itself in the "uncomfortable position" of arguing that the District of Massachusetts has subject matter jurisdiction over this case despite a prior ruling to the contrary in a related case. Plaintiff does not argue, however, that transfer is improper because the case could not have been brought in

the District of Massachusetts. Indeed, Plaintiff attempts to avoid collateral estoppel on this issue through his assertion that this case involves different issues concerning subject matter jurisdiction. Furthermore, the requirement that a case transferred only to a district where "it could have been brought" should not operate to allow a plaintiff to avoid specific precedents or rulings by "shopping" among different forums for the application of some particular view of the law. Cf. Schmid Laboratories, Inc. v. Hartford Accident and Indemnity Co., 654 F.Supp. 734, 737 (D.D.C. 1986); Cheeseman v. Carey, 485 F.Supp. 203, 215 (S.D.N.Y.), remanded on other grounds, 623 F.2d 1387 (2d Cir. 1980). Defendant's seemingly contradictory position is in reality a product Plaintiff's apparent attempt to

manipulate the court system through forum shopping and does not serve as grounds for preventing the transfer of this case to the appropriate forum.

For the foregoing reasons, Defendant's Motion to Transfer to the District of Massachusetts (Doc. No. 30) is **GRANTED.** This case is transferred to the United States District Court for the District of Massachusetts, the Court declines to rule on the alternative Motion to Dismiss.

DONE AND ORDERED AT Orlando, Florida this 21st day of April, 1992.

/s/ Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

UNITED STATED DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA ex rel.
ROLAND A. LeBLANC,
Plaintiff

92-10999-MA
Civil Action 91 440-CIV ORL-19

Vs.

RAYTHEON COMPANY,
Defendant

MEMORANDUM AND ORDER

Mazzone, D.J.
May 15, 1992

This matter is before me on the defendant's motion to dismiss the complaint for failure to state a claim. Fed. R. Civ. P. 12(b)(6). The case has followed a somewhat irregular course during its existence, marked by changes in fortune. This is but another step in the course, and a brief one on its way to a dispositive level. Some background follows.

On October 21, 1988, the plaintiff, Roland LeBlanc, filed a qui tam action in

the District of Massachusetts against Raytheon under the False Claims Act, 31 U.S.C. § 3729, et seq.. He claimed he obtained knowledge of false and fraudulent conduct by Raytheon on defense contracts when he worked as a quality assurance inspector at the Raytheon facility in Waltham, Massachusetts. He was employed at the time by the U.S. Defense Contract Administration Service.

That case was dismissed on the grounds that LeBlanc, as a government employee, was excluded from bringing a qui tam action under 31 U.S.C. §3729. U.S. ex rel. LeBlanc v. Raytheon Co., 729 F. Supp. 170 (D. Mass. 1990). On September 4, 1990, the First Circuit Court of Appeals affirmed the result below on the grounds that LeBlanc did not have the independent knowledge of the information required by the statute. U.S. ex rel. LeBlanc v.

Raytheon Co., 913 F.2d 17, 20 (1st Cir. 1990). Certiorari was denied on March 18, 1991. LeBlanc v. United States, 111 S. Ct. 1312 (1991).

At this point, the plaintiff's fortunes improved. On May 29, 1991, the Eleventh Circuit held that a government employee was not barred from bringing a qui tam action under the False Claims Act based on information he acquired in the course of his government employment, and explicitly rejected the reasoning of the First Circuit. U.S. ex rel. Williams v. NEC Corp., 931 F.2d 1493, 1500, n.13, 1501 (**11th** Cir. 1991). Buoyed by this decision, LeBlanc sought leave to petition for rehearing before the Supreme Court, citing the Williams case. Not waiting for a decision on his motion for rehearing, LeBlanc filed this case in the Eleventh Circuit, specifically in the Middle

District of Florida, Orlando Division. The complaint, though now of gigantic proportions, is identical in all material respects to the complaint filed din 1988 in the District of Massachusetts. LeBlanc is still a resident of Natick, Massachusetts, but Florida jurisdiction is claimed on the basis of a Raytheon facility located on Sand Lake Road, Orlando, Florida.

On August 2, 1991, the Supreme Court denied the motion for leave to seek rehearing. LeBlanc v. United States, 112 S. Ct. 17 (1991). On April 21, 1992, the district court found the connection between the subject matter of the lawsuit and the Middle District of Florida virtually non existent and, over the opposition of the plaintiff, transferred the case to this Court. It was assigned to me pursuant to this Court's random

draw. Thus, the plaintiff's journey is back where it started in 1988, with few differences except, of course, for the intervening Eleventh Circuit decision in Williams.

A comparison of the two complaints is revealing. The first complaint is 55 pages long and contains 89 paragraphs. It was filed by Boston counsel and Washington counsel. The second complaint, filed pro se, is 205 pages long and contains 678 paragraphs. In apparent, and, as a pro se plaintiff, understandable ignorance of Fed. R. Civ. P. 8(a)(2) which calls for a short and plain statement of the claims, the plaintiff has dramatically increased his claims.1 For example, the alleged fraudulent conduct by Raytheon with regard to the Spot Welding Specifications yielded 7 claims in the first complaint. In the second complaint, the same conduct results

in 23 claims. Claims 29 through 30 deal with violations of the painting specifications, and so forth. In all, there are 16 separate categories of alleged fraudulent claims and 92 specific claims for relief within those categories. Attached to the complaint are 54 exhibits. Frankly, the complaint should be dismissed for failure to comply with Rule 8. It is verbose, confusing, overly technical, and contains complicated and endless references to technical bulletins, manuals and regulations. The complaint is simply overwhelming and completely unnecessary given the straightforward nature and purpose of the qui tam action.

Even more revealing are the few relevant additional allegations made by LeBlanc in the second complaint. In an apparent attempt to take advantage of the First Circuit's limitation in its decision

to the facts presented, LeBlanc adds allegations concerning additional hours and labor that he expended outside his job environment and requirements without compensation. This extra employment work occurred even after his termination and/or after the filing of the first complaint, and, therefore, compels a different analysis and result. Yet, to my review, every single one of the 54 exhibits attached to the complaint is signed by LeBlanc in his capacity as a government employee and other than his bald assertion, there is no support for these additional allegations.

On the basis of this entire record, including the record of the previous case, the defendant's motion to dismiss is allowed and the complaint dismissed. An extended analysis by this Court is not necessary. On this record the plaintiff

is barred by principles of both res judicata and collateral estoppel. A final judgment was obtained in the first case; the case was decided by a court of competent jurisdiction; the parties are identical; the causes of action are identical; and the plaintiff has had a full and fair opportunity to present his claims to the district court and the court of appeals in this circuit. Dowd v. Society of St. Columbans, 861 F.2d 761, 763 (1st Cir. 1988) (reviewing requirements of res judicata); NLRB V. Donna-Lee Sportswear Co., 836 F.2d 31, 34 (1st Cir. 1987) (reviewing requirements of collateral estoppel).

Plaintiff obviously attempts to take advantage of what he perceives as a change in the law. However, the prior ruling by the First Circuit is still valid and is therefore controlling in this case and

binding on this Court, despite any rulings to the contrary by other circuits. In addition, even if the law had changed, the ruling would still be binding on this Court.

> The general rule... throughout the nation is that changes in the law after a final judgment do not prevent the application of res judicata and collateral estoppel, even though the grounds on which the decision was based are subsequently overruled.

Precision Air Parts Inc. v. Avco Corp., 736 F.2d 1499, 1503-1504 (11th Cir. 1984), cert. denied, 469 U.S. 1191 (1985). E.g., Wilson v. Lynaugh, 878 F.2d 846, 850-851 (5th Cir. 1989), Ucert. denied, 493 U.S. 969 (1989); Harrington v. Garland, 551 F.Supp 1371, 1377 (D. Me. 1982), aff'd, 715 F.2d 1 (1st Cir. 1983); Hardison v. Alexander, 655 F.2d 1 (1st Cir. 1983); Hardison v. Alexander, 655 F.2d 1281, 1288 (D.C. Cir. 1981). See also Harrington v. Vandalia-Butler Bd. of Education, 649 F.2d

434, 438 (6th Cir. 1981); 18 Wright, Miller & Cooper Federal Practice and Procedure §4415 at 130 (1981).

An exception to this rule exists with respect to major changes in the law involving "important, fundamental constitutional rights" when "public policy so demands." Precision, 736 F.2d at 1504. E.g., Jackson v. DeSoto Parish School Board, 585 F.2d 726, 729 (5th Cir. 1978) (holding no res judicata with respect to change in the constitutional rights regarding re-apportionment process); Christian v. Emison, 303 F.2d 52, 54-55 (5th Cir. 1962), cert. denied, 371 U.S. 920 (1962) (Holding no res judicata due to Supreme Court's overruling of the separate but equal doctrine in Brown v. Board of Education). Here, however, no constitutional issues are involved. Whatever rights the plaintiff still has,

he must pursue through direct appeal, not a second, similar cause of action. Jaffree v. Wallace, 837 F.2d 1461, 1469 (11th Cir. 1988).

The issue is an important one. Not only must the plaintiff first avoid the preclusive effect of the First Circuit's ruling, it must then persuade the First Circuit to revisit the issue. At this level, however, I am satisfied that the above analysis controls.

In accordance with the foregoing, the motion to dismiss is allowed and the complaint dismissed.

SO ORDERED.

/S/ A. David Mazzone
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA ex rel.
ROLAND A. LeBLANC,

Plaintiff,

CIVIL ACTION
No. 92-10999-MA

V.

RAYTHEON COMPANY,

Defendant.

ORDER OF DISMISSAL

MAZZONE, U.S.D.J.

In accordance with the Court's Memorandum and Order dated May 15, 1992, allowing the defendant's motion to dismiss (docket no. 30), it is hereby **ORDERED:**

The motion to dismiss is **ALLOWED.** The complaint is hereby **DISMISSED.**

By the Court,

May 18, 1992

[illegible]
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
No. 92-1683

UNITED STATES OF AMERICA EX REL,
Roland A. LeBlanc,
Plaintiff, Appellant,

v.

RAYTHEON COMPANY,
Defendant, Appellee.

JUDGEMENT

Entered December 29, 1992

This cause came on to be heard on the briefs and the original record on appeal from the United States District Court of Massachusetts.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: **The judgment of the district court is affirmed. Double costs awarded to the appellee.**

By the Court:

FRANCIS P. SCIGLIANO, CLERK.

BY:/s/ Daniel F. [illegible]
Chied Deputy Clerk

(Messrs. Olenick & Sauber)

Per Curiam. Appellant LeBlanc's brought suit against appellee Raytheon Company brought under the False Claims Act, 31 U.S.C. 3729. In his complaint, he alleged that Raytheon defrauded the United States. The district court dismissed the complaint on res judicata grounds. We affirm the district court's judgment and award double costs to appellee. See United States ex rel. LeBlanc v. Raytheon Co., No. 92-10999 (D. mass. May 15, 1992).

Affirmed. Double costs to appellee.

Respectfully submitted,

ROLAND A. LeBLANC

By his Attorney,

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Five Commonwealth Road
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(508) 650-0055

March 27, 1993